

**REMARKS / ARGUMENTS**

The present application includes pending claims 1-31, all of which have been rejected. By this Amendment, claims 2-4, 7-20, 23, and 27-31 have been amended, as set forth above, to further clarify the language used in these claims and to further prosecution of the present application. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should state all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth "all reasons and bases" for rejecting the claims.

Claim 13 was objected to because of the following informality: the claim depends on itself. The Applicant has amended claim 13 as set forth above to overcome this informality. Claims 11-20 are rejected under 35 U.S.C. § 101 as being directed to a computer program per se. Claims 3 and 11-20 are rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Claims 1-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,970,919, issued to Doi, et al. (hereinafter, Doi). Claims 1-3 and 5-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,917,624, issued to Gorman (hereinafter, Gorman). The Applicant respectfully traverses these rejections at least based on the following remarks.

**I. Claim Objections**

Claim 13 was objected to because of the following informality: the claim depends on itself. The Applicant has amended claim 13 as set forth above to overcome this informality.

**II. Claim Rejections under 35 U.S.C. § 101**

Claims 11-20 are rejected under 35 U.S.C. § 101 as being directed to a computer program per se. The Examiner states the following in page 2 of the Office Action:

Regarding claims 11-20, are directed to a computer program per se. **Therefore it is merely a functional descriptive language, and it is not statutory as it fails to fall into one of the four statutory classes of invention: process, machine, manufacture, or composition of matter.**

The Applicant respectfully disagrees. The Examiner is referred to the following citation from the MPEP:

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, **“functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component.** (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) **“Nonfunctional descriptive material” includes but is not limited to music, literary works, and a compilation or mere arrangement of data.**

See Manual of Patent Examining Procedure (MPEP), Chapter 2100.6. The Applicant points out that the descriptive material in the preamble of claim 11 is not related to “music, literary works, and a compilation or mere arrangement of data.” Instead, the Applicant submits that the descriptive material in the preamble of claim 11 is related to “computer programs which impart functionality when employed as a computer component.” In other words, the material in the

preamble of claim 11 is "functional descriptive material." The Examiner is also referred to the following MPEP citation for support:

**When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory** in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

*See id.* **The Applicant, therefore, submits that the material in the preamble of claim 11 is functional descriptive material, which is also statutory, as per the above MPEP guidelines.** The Applicant submits that claims 11-20 are directed to statutory subject matter, and that the rejection of claims 11-20 under 35 USC § 101 should be withdrawn.

### **III. Claim Rejections under 35 U.S.C. § 112**

Claims 3 and 11-20 are rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Examiner states the following in pages 2-3 of the Office Action:

Claims 3 and 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3 line 1-2, the term "said provisioned communication functions" has no antecedent basis.

Regarding claims 11-20, the recitation of "A machine-readable storage having stored thereon, a computer program having at least one code section for supporting a plurality of broadband networks and various service provider infrastructures, the at least one code section being executable by a machine for causing the machine to perform steps" is vague and indefinite because it is not known the metes and bounds of the claimed invention, because it is not known what is "machine readable storage".

The Applicant points out that claim 3 has been amended to overcome the above rejection under 35 U.S.C. 112, second paragraph. Furthermore, the Examiner is referred to Section II above, where the Applicant has explained that the use of "computer-readable medium" is statutory and it complies with MPEP guidelines. The Applicant submits that the rejection of claims 3 and 11-20 under 35 USC § 112 should be withdrawn.

## **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

### **IV. Doi Does Not Anticipate Claims 1-31**

The Applicant first turns to the rejection of claims 1-31 under 35 U.S.C. 102(e) as being anticipated by Doi. With regard to the anticipation rejections under 102(e), MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical

invention must be shown in as complete detail as is contained in the ... claim."

See id. (internal citation omitted).

**A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Doi does not disclose or suggest at least the limitation of "establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network," as recited by the Applicant in independent claim 1.

The Office Action states the following:

Regarding claim 1, Doi et al. teaches a method and system for network management (see column 2 line 21-31) comprising: establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network (see column 15 line 53-59 and figure 26 dotted line between node F and node G);

See the Office Action at page 3. The Examiner is referring to Figure 26 as well as the following citation of Doi:

In FIG. 26, the edge (1), the link (a), the node A, and the link (a1) are already set with regard to details thereof, and the node F has a route-specific attribute thereof set to S-PVC Calling. **When the node G is added to the route, a virtual link shown by a dotted line is displayed despite the fact that there is no physical link between the node F and the node G.**

See Doi, col. 15, lines 53-59 (emphasis added). Referring to Figure 26 of Doi, the Applicant points out that there is no pre-existent link between nodes F and G. When node G is added to the route, then a virtual link between nodes F and G is created (reflected by the dotted line in Figure 26). However, the virtual link is the only link between nodes F and G (there is no first and second communication paths between nodes F and G), which is clearly seen from Figure 26 as well as from the above bolded citation from Doi.

Therefore, the Applicant maintains that Doi does not disclose or suggest at least the limitation of “establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network,” as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Doi and is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-10, 12-20 and 22-31**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated

by Doi has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20 and 22-31 depend from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-31.

**V. Gorman Does Not Anticipate Claims 1-3 and 5-10**

The Applicant first turns to the rejection of claims 1-3 and 5-10 under 35 U.S.C. 102(e) as being anticipated by Gorman.

**A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Gorman does not disclose or suggest at least the limitation of “transferring information that would be normally transferred over said first communication path between said at least two endpoints via said established second communication path,” as recited by the Applicant in independent claim 1.

The Office Action states the following:

Regarding claim 1, Gorman discloses an apparatus for providing a derived digital telephone voice channel (see column 2 line 39-43)



comprising: establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network (see column 2 line 61-65); transferring information that would be normally transferred over the first communication path between the at least two endpoints via the established second communication path (see column 3 line 1-8).

See the Office Action at page 6. The Examiner is referring to the following citation of Gorman:

The present embodiment provides the **distribution of high-speed data and lower speed POTS signals on separate wireless and wireline network** distribution facilities to avoid the cost and disruption of installing additional wiring at the customer premises.

See Gorman, col. 2, lines 61-65 (emphasis added). Gorman discloses an information distribution system within a customer premises location using a **wireline distribution network for distributing high-speed data and a separate wireless distribution network** for distributing Plain Old Telephone Service ("POTS") and lower speed data. See Gorman, col. 2, lines 39-43. Furthermore, Gorman discloses that the existing telephone wiring does not carry POTS and can be utilized to carry high-speed data typically associated with digital computer data or multimedia information. See *id.* at col. 3, lines 5-8. In this regard, the slower speed wireline network is used for POTS signals, and the wireless network is used for high-speed data. In addition, **high-speed data, which is normally**

**communicated via the high-speed wireless network, cannot be communicated via a slow-speed wireline network of Gorman.**

Therefore, the Applicant maintains that Gorman does not disclose or suggest at least the limitation of "transferring information that would be normally transferred over said first communication path between said at least two endpoints via said established second communication path," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Gorman and is allowable.

**B. Rejection of Dependent Claims 2-3 and 5-10**

Based on at least the foregoing, the Applicant believes the rejection of independent claim 1 under 35 U.S.C. § 102(e) as being anticipated by Gorman has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-3 and 5-10 depend from independent claim 1, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-3 and 5-10.

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**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

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Respectfully submitted,

  
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